

## **REMARKS**

### **I. Introduction**

Claims 100 to 106 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

### **II. Rejection of Claims 100 to 103 Under 35 USC §102(b)**

Claims 100 to 103 were rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,609,285 ("Grant et al."). Applicants respectfully submit that Grant et al. do not anticipate the present claims for the following reasons.

Claim 100 relates to a surgical device for at least one of cutting and stapling a section of tissue. Claim 100 recites that the surgical device includes a housing defining a bore and having a distal end. Claim 100 has been amended without prejudice herein to recite that the housing is for staples. Support for this amendment may be found, for example, at page 5, line 16 of the Specification, which states that "[t]he surgical device also includes a housing including a stapling element." Claim 100 recites that the surgical device includes a trocar shaft disposed through the bore of the housing so as to be moveable relative to the housing. Claim 100 recites that at least a portion of the trocar shaft that extends distally relative to the distal end of the housing is flexible. Claim 100 also recites that the surgical device includes an anvil attachable to the trocar shaft and configured to be moveable relative to the housing by movement of the trocar shaft.

It is respectfully submitted that Grant et al. does not anticipate claim 100 for at least the reason that Grant et al. does not disclose, or even suggest, all of the features recited in claim 100. For example, Grant et al. does not disclose, or even suggest, that at least a portion of a trocar shaft that extends distally relative to a distal end of a housing **for staples** is flexible, as recited in claim 1. The Specification states that "the flexible cable 4212 of the anvil assembly 4112 and the flexible trocar shaft 4108 enable the anvil assembly 4112 to be more easily connected to the flexible trocar shaft 4108." The Specification further states that "[f]or instance, this arrangement may enable the anvil assembly 4112 to be connected to the flexible trocar shaft 4108 without requiring that the anvil assembly 4112 be aligned with the flexible trocar shaft 4108 prior to such connection and/or with requiring that the tissue limbs in which the anvil assembly 4112 and the flexible trocar shaft 4108 are positioned be aligned prior to such connection."

Grant et al. describe a housing 104 that includes a staple holder 102, e.g., col. 14, lines 11-14. Figure 7 of Grant et al., which is stated to show a stapling head assembly that is in its fully-open position, illustrates that the trocar shaft 84, which the Office Action identifies as being the recited flexible trocar shaft, never extends beyond the housing for staples, i.e., the housing 104. Thus, the trocar shaft 84 does not constitute a trocar shaft that extends distally relative to a distal end of a housing for staples. Also, Figure 7 illustrates that the trocar 200, which extends beyond the housing 104 for staples, is plainly rigid. Thus, the anvil assembly 100 of Grant et al. and the trocar 200 (along with the tissue limbs to be connected) must be aligned prior to their connection. In view of the foregoing, it is respectfully submitted that Grant et al. do not disclose, or even suggest, all of the features recited in claim 100. As such, it is respectfully submitted that Grant et al. do not anticipate claim 100.

As for claims 101 to 103, which ultimately depend from claim 100 and therefore include all of the features recited in claim 100, it is respectfully submitted that Grant et al. do not anticipate any of these dependent claims for at least the same reasons set forth above in support of the patentability of claim 100.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

### **III. Rejection of Claims 104 to 106 Under 35 U.S.C. § 103(a)**

Claims 104 to 106 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Grant et al. and U.S. Patent No. 6,491,201. Claims 104 to 106 ultimately depend from claim 100 and therefore include all of the features included in claim 100. It is respectfully submitted that claims 104 to 106 are patentable at least due to their ultimate dependency from claim 100. In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

### **IV. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

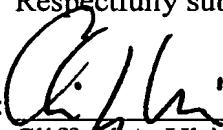
V. **Fees**

The Commissioner is hereby authorized to charge the one-month \$60.00 extension fee and any other necessary fees that may be required or credit any overpayments to the deposit account of Kenyon & Kenyon LLP, Deposit Account No. 11-0600.

Respectfully submitted,

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